

ORDINANCE NO. 2005-05

AN ORDINANCE OF THE TOWN OF SILVERTON, COLORADO APPROVING THE LEASE OF CERTAIN PROPERTY TO SAN JUAN COUNTY, COLORADO FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A PRE-SCHOOL FACILITY.

WHEREAS, the Town will acquire a parcel of property containing approximately ten thousand, one hundred, seventy-one square feet which is a portion of the Stanley Placer, which parcel is conveyed as the public dedication required by the provisions of the Town Code as part of the process of development of the Stanley Placer, and

WHEREAS, the Town and the County have determined that a pre-school is necessary in Silverton to meet the health and welfare needs of the citizens of the Town and the County, and

WHEREAS, the above described parcel is appropriate for use as a site for the pre-school, and

WHEREAS, the Town and the County have negotiated a lease agreement that will allow the County to construct, maintain and operate a pre-school on the said site, and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SILVERTON AS FOLLOWS:

1. The Intergovernmental Lease Agreement in the form attached hereto as Attachment A is hereby approved under the provisions of the Town Code and of C.R.S. 31-15-13(1)(c).

Adopted and ordered published this 27th day of June, 2005.

TOWN OF SILVERTON

Attest:

Yves Boyulic
Town Clerk-Treasurer

by:

Jim Hoffman
Mayor

GROUND LEASE

This ground lease is made and entered into effective this ____ day of _____, 2005 by and between the Town of Silverton, Colorado, P. O. Box 250, Silverton, CO 81433 (Town) and San Juan County, Colorado, P. O. Box 466, Silverton, CO 81433 (County).

WHEREAS, Town and County have determined that a preschool is needed in Silverton for the education and well being of the citizens of Silverton and San Juan County and in order to promote economic development; and

WHEREAS, after years of study and numerous private efforts to build a suitable preschool facility, Town and County have determined that a suitable facility for a preschool cannot be constructed without the participation of local government; and

WHEREAS, Town and County have been approached to assist the Silverton Family Learning Center with the construction of a preschool facility; and

WHEREAS, the County has agreed to be the lead agency constructing a building suitable for use as a preschool while the Town is acquiring and has available land on which a preschool facility can conveniently be constructed; and

WHEREAS, the parties hereto have determined that cooperation and consolidation of their efforts will be the most effective and least expensive means of pursuing the construction of a suitable preschool to benefit their citizens;

NOW THEREFORE, for and in consideration of the mutual obligations contained herein, the parties hereto agree as follows:

1. Authority This lease is made and entered into by the Town of Silverton pursuant to the provisions of C.R.S. 31-15-713 and by the County pursuant to the provisions of C.R.S. 30-11-101, 102 and 107.
2. Leased Premises Town hereby leases to County and County hereby rents from Town on the terms and conditions expressed in this Lease the unimproved real property described on the attached Exhibit A (the "Leased Premises" or "the Property"). The Leased Premises shall be used by the County, and/or its sublessees, only for public purposes, the initial purpose being the construction and operation of a preschool for the benefit of the residents of Silverton and San Juan County. In the event that the Leased Premises shall cease to be used for a preschool, County may propose to the Town that the Leased Premises be used for some other public purpose. Town shall have the right to review and approve any proposed alternate use of the Leased Premises, provided however, that Town shall not withhold its approval of any public use which is generally consistent with the Town's zoning and land use regulations.
3. Term This Lease shall be for a period of ninety-nine years beginning June 1, 2005 and ending at midnight, May 31, 2104.

4. Rent As rent for the Leased Premises, for the duration of the Lease term, County agrees to pay Town the sum of One Dollar (\$1.00) per year, such payment being made on or before June 1 of each year of the term hereof, the first such payment being made at signing hereof. Notwithstanding any provision hereof, this Lease is not intended to be, nor shall it constitute, a multiple-fiscal year financial obligation of County. While County hereby affirms its present intention to appropriate funds sufficient to pay all amounts specified herein in subsequent years, it shall be under no obligation to do so. In the event the rent specified above is not paid on or before June 1 of any year during the term of this Lease, Town may declare County in default hereunder pursuant to the default provisions below.

5. County's Obligations

A. As soon as reasonably possible after signing this Lease, County shall extend utilities (water, sewer, electric, and telephone) to the Property and shall construct on the Property a facility suitable for use as a preschool, daycare or and early learning center. No subdivision, land use or other approvals shall be required for such construction provided however that, before beginning construction, County shall obtain from the Town a building permit for construction of the facility and further provided that all construction shall fully comply with all applicable provisions of the Town's building code. County shall be solely responsible for the cost of all construction, including the cost of extending utilities to the Property. County shall be solely responsible for seeing that construction of the facility is in accordance with any permits obtained from the Town and with the plans on which such permits are based.

B. The parties recognize that County will have to obtain additional funds in order to finance construction of the preschool facility. While the Town will continue to own the underlying land which is leased to County pursuant hereto, County shall own any facilities constructed thereon. The parties anticipate that the County will enter into a lease-purchase arrangement pursuant to which an entity other than the County provides some funding for the construction of the preschool and thereafter leases the completed structure to the County. Nothing contained herein shall be deemed to preclude the County from entering into such a lease purchase agreement and the Town hereby expressly consents to same.

C. Upon completion of the preschool facility, County is expressly authorized to sublet the Leased Premises and any improvements thereon to a non-profit entity to operate any facility constructed by the County. County shall afford the Town the opportunity to comment upon any proposed sublease before signing same and shall provide Town a copy of such sublease immediately upon its becoming effective.

D. For the duration of the lease term, County agrees to perform the following obligations or to require its sublessee's to perform the following obligations:

- to use and maintain the Leased Premises and all improvements to be constructed thereon in strict conformity with any and all laws and regulations applicable thereto;

- to refrain from doing, and to prevent others from doing, anything on or with the Leased Premises which would contravene any law or regulation applicable to the Leased Premises or which would adversely affect the title to the Leased Premises;

- to pay on demand Town's expense incurred in enforcing any obligation of County under this Lease which the County fails or refuses to make within a reasonable time after notice by the Town of such failure;

- to refrain from storing, dumping or depositing, or permitting others to store, dump or deposit on the Leased Premises any hazardous, flammable, toxic, explosive, dangerous or manmade materials; and

- to promptly pay the cost of any improvements which County makes to the premises and to neither suffer nor permit any liens or claims of any type, sort or description to be made against the Leased Premises.

6. Default/Termination If County or County's sublessee shall fail to fulfill any obligation imposed by this Lease, Town, at its sole option by written notice to County's sublessee with a copy to County, may declare County to be in default. Such notice of default shall indicate the specific nature of the claimed default. County and its sublessee shall have thirty days after receipt of notice of default to remedy same, provided however that so long as the County or its sublessee is reasonably attempting to remedy the default, if the default cannot reasonably be remedied within thirty days, the thirty day shall be extended for as long as may be necessary. If the County and its sublessees fail to timely correct any default, Town may terminate this Lease. Upon termination, all improvements upon and appurtenances to the Property shall become the property of the Town. If, at any time, the Lease term shall be ended or this Lease shall be terminated, the County hereby agrees to immediately surrender and deliver up the premises peacefully to Town and to be liable for any damage or injury to Town caused by County's failure to surrender the premises.

7. Miscellaneous

A. Waiver No failure by any party hereto to insist upon strict performance of any of the obligations, covenants, or agreements contained in this Lease, nor any failure to exercise any option, privilege, or right granted hereunder or pursuant to law shall be construed as a waiver, relinquishment, or release of any such rights nor shall it be deemed or taken as a waiver of any prior or succeeding breach.

B. Successors and Assigns This Lease shall be binding upon, and inure to the benefit of, the heirs, successors, and assigns of the Town and of the County.

C. Entire Agreement This Ground Lease sets forth the full and complete understanding between Town and County concerning the Leased Premises and there are no other covenants, promises, agreements, conditions, or understandings, either oral or written, regarding the Leased

Premises other than as set forth herein. It is further agreed that no provision in this Lease may be modified nor shall any understanding between the parties be effective, unless written and signed by both parties.

D. Effective Date This Lease shall become effective immediately upon its being adopted by both the Board of County Commissioners of San Juan County, Colorado and by the Town Board of Trustees of Silverton, Colorado as provided by law.

E. Severability In the event this Lease, or any part thereof, is determined to be invalid, and said determination of invalidity is not successfully challenged, any portion hereof not expressly invalidated shall remain in full force and effect and the court invalidating any term hereof shall be requested to formulate an alternative term which will meet the parties objectives as stated herein in a lawful manner.

The Board of County Commissioners
of San Juan County, Colorado

Silverton Town Board of Trustees

By: _____
Ernest Kuhlman, Chairman

By: _____
Mayor

State of Colorado:
County of San Juan:

Be it remembered that on this ____ day of _____, 2005, the foregoing instrument was signed and acknowledged before me by Ernest Kuhlman, Chairman of the San Juan County Board of Commissioners. In testimony whereof, I have hereunto set my hand and affixed my notarial seal on the day and year aforesaid. My commission expires on _____.

Signature of Notary Public

State of Colorado:
County of San Juan:

Be it remembered that on this ____ day of _____, 2005, the foregoing instrument was signed and acknowledged before me by _____, Mayor of the Town of Silverton, Colorado. In testimony whereof, I have hereunto set my hand and affixed my notarial seal on the day and year aforesaid. My commission expires on _____.

Signature of Notary Public